

1.

In Re Petition of Mrs. Emily Linderman for hearing.
Brief of Argument.

1st.

It being the fact that the "Rules and Regulations Governing the Transaction of Business at the Mint and assay offices" and dated 1874, and upon which the Director of the Mint relied in his communication to Messrs. Bangs & Co., dated June 25th, 1887, (Exhibit "A"), were compiled by the late Hon. Henry R. Linderman, M.D., then Director of the Mint, under the authority conferred upon the Director of the Mint by the provisions of the Coinage Act of 1873, of which Act Dr. Linderman was the author, we contend that the proper and only interpretation of the Rules of 1874, particularly as to transactions at that time and during Dr. Linderman's term of office-1873-1878-under the said Rules, is to be found in the practice of the Bureau of the Mint under its first head and its organizer, to wit, the said Dr. Henry R. Linderman. It would be useless to multiply words in support of the view that Dr. Linderman was best qualified to settle the practice under ^{Legislation and} consequent rules, governing the Mint Service, of which he was the author. Pieces of the precise and specific nature of those in controversy have been sold and resold and even traded by the Philadelphia Mint and since its foundation, no objection has even been thought of to sale of such pieces. Until the sale of the collection in question, to part of which objection has been raised by the Director of the Mint, no such objection has ever been considered within the province of the Mint authorities, and pieces of the specific character of those referred to have been sold and bought and have been considered merchandizable as are other works of art. Such has been the state of facts in this regard from the early years of the Mint under the old law, and under the Coinage Act of 1873 this has been the practice of the Bureau of the Mint;-under Dr. Linderman, under his successor, Mr. Burchard, and under the third and present Director of the Mint, as witness the sale of the Maris collection in Philadelphia, a little more than a year ago, under the very eye of the Mint authorities there. In this Maris collection was the largest number of pattern pieces, of the specific character of those in the Linderman collection, ever offered at public sale. The Director of the Mint took no notice of that sale, even though one pattern piece struck in soft metal and of no regular series of adopted coins, was advertised in the catalogue as the gift of the Hon. John Sherman, formerly Sec'y of the Treasury, to the vendor, Dr. Maris. In the construction of the coinage Act of 1873 and of the Rules of 1874 the common law rule of interpretation of a statute would necessarily be applied and in addition to that well-known rule of explaining a statute, or legislative enactment, we offer the practice of the Bureau and the Department during the official terms of Dr. Linderman, Mr. Burchard and, until June 25th, 1887, of Mr. Kimball. It is further suggested that the Mint at Philadelphia has been invited at many coin sales to bid for pattern pieces, of all sorts and of the exact character of those in controversy, in order to enrich the public cabinet collection at that institution. Reference to many private collections as catalogued will show that a number of gentlemen in this country have in their possession pieces of the specific character of the pattern pieces in the Linderman collection. Several catalogues, showing this state of facts and covering a period of many years, are in the hands of Gen'l O. H. LaGrange, of 120 Broadway, New York, of counsel, when this matter was before the U. S. Dist. Attorney in that city.

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2d.

We call attention to the letter marked Exhibit "A."

Examination of its contents will show, 1st., that the Director of the Mint alleges a prima facie claim that certain pieces in the Linderman collection are not of merchandizable quality. It is suggested, in this connection, that the decision of the learned Dist. Attorney in New York, to whom this matter was referred by the Solicitor of the Treasury for final action, disposed of the matter, and that decision was throughout favorable to the owners of the collection and their right to sell their property. Nothing but a prima facie claim was alleged by the Director of the Mint and that was unsupported except by the circular of the latter, of July 1st, 1887, (Exhibit "D"), which circular was considered by the learned Dist. Attorney, in his disposition of the case, and by him decided to be without warrant of law for its issuance.

Examination of the contents of Exhibit "A" will further show that the Director of the Mint included in "Nos. 55 to 171, inclusive," patterns struck in proper metal and also adopted coins. By the Director's own interpretation of the law and the Rules this class of pieces is a lawful issue. In support of this fact we call attention to Exhibit "C." The Director not only included the pieces referred to but he included in Nos. 55 to 171 a very large number of pieces struck before the Rules of 1874 were in existence. This fact is particularly set forth in Exhibit "C." and both facts here alluded to can be verified by examination of the printed catalogue of the collection.

3d.

The collection was formed by the Late Dr. Linderman at a large expense. The pieces in it were acquired by purchase by him. During the illness which resulted in his death he gave the collection to his wife and son. Affidavit as to these facts, well and personally known to her, was made by his widow, and filed in the of-

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fice of the District Attorney in New York City, when the case was under advisement by him. We desire further to state that this collection has been in the care of the Safe Deposit Co. in Washington, with other property of Mrs. Emily Linderman and Henry R. Linderman, since the death of Dr. Linderman in 1879 until May 1887, a period of nine years, and that they, the said Mrs. Emily Linderman and Henry R. Linderman, were well known to be the lawful and rightful owners of this collection. This collection was offered for sale by them through the agent, Mr. Lyman H. Low, and his auctioneers, Messrs. Bangs & Co., all of New York City, the sale to take place on the 28th of June, 1887. It is contended that the interference of the Director of the Mint, and the consequent stoppage of the sale, working great damage and injury to the said Mrs. Emily Linderman and Henry R. Linderman, owners of the said collection, was without warrant in law, and an arbitrary interference with vested property rights.

4th.

It is contended and attention is particularly called to this point, that a ruling of the Department can no more be retroactive in its spirit, intention, and force than a statute. In no case do the law and the courts more jealously guard rights from being retroactively affected than in the case of vested property rights, real and personal. This statement of the law is truth itself. It follows then, that the lawful and rightful ownership in this collection having been acquired by the late Dr. Linderman, under rulings of the Treasury Department in force at the time and up to the present controversy, and the said collection by him conveyed to his wife and son, the said Mrs. Emily Linderman and Henry R. Linderman, in consideration of natural love and affection, the lawful and right-

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ful ownership of the said collection vested in them, and that their valid and legal title to the same cannot now be affected by a ruling of the Department made many years after their property was lawfully acquired. And this for the reason in law above set forth namely; tha a ruling of the Department cannot be retroactive. The provisions of the statutes on which the circular, Exhibit "D," is based, not having ever before been ruled to apply in the manner set forth in the circular, the said ruling of the Department is therefore retroactive and consequently void as regards this collection, title to the said collection having vested in Mrs. Emily Linderman and Henry R. Linderman many years before the said ruling was made. For the same reason a construction of the rules of 1874 now made cannot affect this collection, acquired under a different construction of those Rules, made by the author of the said Rules many years ago.

5th.

We call attention to Exhibit "D,"-the circular of July 1st, 1887,-and proceed to its consideration.-

1st. There are no impressions of experimental dies in the Linderman collection. Such impressions are not lawful and none are known to be in existence. Their existence would be indirect conflict with the Rules of 1874, referred to in the circular. But the said Rules of 1874 distinctly authorize pattern, or specimen, pieces to be struck in copper or other soft metal, from completed dies, whether adopted in the regular coinage series or not, and make provision for presenting pattern pieces to incorporated numismatic societies, free of charge when struck in base metal, and, when struck in silver or gold, the value of the metal to be charged. This is the large class of pieces known as patterns and, until recently, by the practice of the old Mint at Philadelphia and the practice of the Bureau of the Mint, regarded as lawfully comprising patterns of completed dies, whether adopted or not, struck in base

metals, or in silver, or in gold, the patterns of those dies not adopted (and of course destroyed) being the only patterns of unique value. This class of pieces has been sold, resold, and traded in from time immemorial, until the present Director has undertaken to regulate the numismatic trade in this particular. Gov. Pollock, ex.-Director of the Mint under the old law, and superintendent of the Philadelphia Mint at the time the Rules of 1874 went into force and for many years after, - (a learned, conscientious, and well-known Director of the Mint and a trusted Supt. of the parent institution at Philadelphia), in a letter submitted to, the District Attorney in New York, when the latter had this matter under consideration, sustained the legality of the Linderman collection at every point, and also the above views of pattern pieces of all sorts. No more practical and capable expert testimony could be secured than that of Gov. Pollock. The impressions which are not authorized and which are required to be destroyed are those experimental impressions taken by the engraver while he is cutting the die, from time to time, to inspect the progress of his work. The Rules of 1874 so effectually treat this subject that none of this sort of impressions is known to be in existence. It is therefore contended that the validity of the Linderman collection cannot be successfully attacked. (Section 9, page 29, Rules of 1874. Section 10, ibid. Entire subject, pages 28 and 29, ibid.)

2d. Section 5460, Revised Statutes, (see circular, Exhibit "D") is relied upon by the director of the Mint; this section of the statutes relates solely to the debasing of gold and silver coins of the regular, adopted coinage; to the defacing, increasing, or diminishing of the weights and measures at the Mints and Assay offices by any of the employees therein with fraudulent intent; and to the embezzling of the Metals committed to the charge of the said employees, or of which they may have assumed the charge, and of course winds up with the penalties for the prescribed offences. But there is absolutely nothing in it which warrants the application of it made in the circular.

6.

Section 3517 is simply directory and descriptive of the designs of the regular coins of the United States, -the regular adopted coinage for National use. It contains nothing else and its peculiar application in the circular is, to say the least, unique.

Section 5460 says nothing about the "striking of a piece in semblance of a United States coin in metal or alloy, etc., other than proscribed by law"; and Section 3517 says nothing about the "emission of, or offer for sale of, an impression from any die of a coin of the United States or proposed coin of the United States etc. The quoted declarations are from the circular, exhibit "D". and it is impossible to see how they can be evolved from the sections of the statutes quoted.

Section 5461 relates solely to persons making, or passing, or attempting to pass, coins of gold or silver, or other metal or alloy in the semblance of United States or foreign coins, for the use and purpose of current money. This is one of the sections aimed at the counterfeiting of the coinage and uttering of false money, with intent to defraud, and is so clear and distinct that it is impossible to see how any other application of it can be made: Sections 3513, 3514, and 3515, Revised Statutes, are solely and entirely descriptive of the authorized, regular coinage, and say nothing about "impressions struck from coinage dies in other metal than that authorized by law", etc.

Sections 3516, 3517, say that no coins either of gold or silver, or minor coinage, shall be issued from the Mints, other than those described in Section 3517, and the sections refer to the coins, - the regular coinage for current use, -and nothing else.

In conclusion, we therefore contend that there is no statute provision, governing pattern pieces, and the like; that there is no statute provision governing the sale of pattern pieces, struck in any metal, whether adopted designs or not; that the whole subject is solely regulated by the Rules of 1874; that the Linderman collection comes only within those rules; that our interpretation of those rules - the interpretation of Dr. Linderman, who framed them - is the correct one; and that consequently there is no warrant of law for interfering with the rights of private property in the sale of the said collection, because a ruling of the Department made now, nearly nine years after the said rights were vested under Department rulings at that time, cannot be retroactive.

Henry R. Linderman,

Of Counsel for Owners
of Linderman collection.